Nova Scotia Utility and Review Board
Annual Accountability Report
For the Fiscal Year Ended March 31, 2008

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Accountability Statement

The accountability report of the Nova Scotia Utility and Review Board for the year ended March 31, 2008, is prepared according to the *Provincial Finance Act* and government policy and guidelines. These authorities require the reporting of outcomes against the Board's business plan for the fiscal year 2007-2008. The reporting of such outcomes necessarily includes estimates, judgements and opinions by management.

It is acknowledged that this accountability report is the responsibility of the Board's management and is, to the extent possible, a complete and accurate representation of outcomes relative to the goals and priorities set out in the Board's business plan for the year.

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Peter W. Gurnham, Q.C., Chair

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Paul G. Allen, CA, Executive Director

Introduction

This accountability report reflects on progress made in achieving the goals and priorities set out in the 2007-2008 Business Plan of the Board, and to describe other significant activities and accomplishments during the year. The 2007-2008 Business Plan more fully describes the Board's core business functions, goals and priorities for the year. The Board recommends that this accountability report be read in conjunction with the Business Plan.

Mandate

The Board is a quasi-judicial body created by the *Utility and Review Board Act*, S.N.S. 1992 c.11. The Board has regulatory and adjudicative jurisdiction to hear applications and appeals under a number of statutes including, but not limited to, the *Public Utilities Act*, *Assessment Act*, *Municipal Government Act*, *Motor Carrier Act*, *Expropriation Act*, *Victims of Crime Act*, *Gaming Control Act, Liquor Licensing Act, Gas Distribution Act, Pipelines Act, Fire Safety Act* and *Education Act*. A complete list of statutes is attached as Appendix A.

The following is a brief description of the Board's responsibilities. For ease of understanding, the various functions are classified as regulatory or adjudicative in nature.

Regulatory Matters

Public Utilities. The Board exercises general supervision over all water, electrical, and steam heat utilities within the Province. This includes setting rates, tolls and charges; approval of regulations for provision of service; approval of capital expenditures in excess of $25,000; and any other matter the Board feels necessary to properly carry out its responsibilities. Nova Scotia Power Inc., an investor-owned utility, is the largest public utility regulated by the Board.

Halifax - Dartmouth Bridges. The Board is required to set the rates, tolls and charges to be paid for use of the two bridges which cross Halifax Harbour and are operated by the Halifax-Dartmouth Bridge Commission.

Motor Carrier. The Board is responsible for economic regulation of the industry and oversight of a comprehensive safety inspection program for all public passenger carriers within the Province and interprovincial carriers operating to and from the Province. Carriers are broadly defined to include not-for-profit carriers and school bus operations, as well as commercial bus companies. Commercial van operations are also included in the safety program but are not economically regulated. Economic regulation includes setting fares, approving routes and stops, approving equipment for use, hearing complaints against carriers, and hearing applications for modification or discontinuance of service.

Natural Gas. The Board has responsibility for regulation of the distribution of

natural gas in Nova Scotia including pipelines and underground storage facilities. That includes, but is not limited to, selection of franchisees, issuing permits to construct distribution systems, and issuance of operating permits for finished systems.

Alcohol, Gaming and Amusements. The Board hears applications involving licensing and discipline of establishments authorized to sell liquor; licensing and discipline relating to gambling operations; and appeals of film classifications. Applications for reinstatement of access to casinos by persons who have voluntarily excluded themselves are also heard by the Board.

Railways. The Board has regulatory responsibilities relating to licensing of short line railways which operate wholly within the Province.

Payday Loans. The Board sets the maximum amounts that can be charged for interest and other fees for loans of $1,500 or less outstanding for 62 days or less. The Act[1] requires the Board to review the rates being charged every three years.

Adjudicative Matters

Planning. The Board hears appeals from municipal councils relating to amendment of land use by-laws and staff decisions concerning issuance or amendment of development agreements.

Municipal and School Board Electoral Boundaries. The Board also hears applications to establish and amend boundaries of municipalities, including towns and regional municipalities. The Board sets polling district boundaries and determines the number of councillors for each municipality, and sets school board electoral district boundaries and determines the number of school board members.

Assessment. The Board hears appeals from decisions of the Regional Assessment Appeal Court respecting real property and business occupancy assessments and change of use tax levies.

Expropriation Compensation. Where a property owner and an expropriating authority cannot agree on the compensation to be paid for expropriated land an application can be made to the Board to set the value.

Victims' Rights and Services Compensation. The Board hears appeals from the decisions of the Director of Victim Services at the Department of Justice concerning compensation for certain expenses incurred by victims of crime.

Fire Safety. Certain orders made by the Fire Marshal and other fire officials under the *Fire Safety Act* may be appealed to the Board.

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1 The *Consumer Protection Act*

Highlights

The following were the most prominent matters during the year requiring significant effort or resources, or having broad public interest:

a. The Board's mandate was expanded to include responsibilities under the *Consumer Protection Act* as it relates to payday loans. The hearing commenced in January of 2008 and final submissions were not received until after the end of the reporting year.

b. A significant portion of the wastewater assets of Halifax Regional Municipality were transferred to the Halifax Regional Water Commission in August of 2008. Amendments to the Halifax Regional Water Commission Act provide that these assets are now subject to the *Public Utilities Act* and are regulated in like fashion to the other assets of the utility.

c. The *Municipal Government Act* requires the Board to conduct a review of municipal and school board polling boundaries every eight years. The Board continued the required review begun in 2006-2007 and, during the year, 46 hearings were held in various locations throughout the Province. Subsequent to year end the Board completed the few remaining reviews in preparation for municipal elections scheduled for the fall of 2008.

d. In November and December 2007 the Board heard claims with respect to the *Canadian Charter of Rights and Freedoms* asserting that sections 44 and 67(1) of the *Public Utilities Act* contravene this statute. These claims arose from a 2005 decision of the Board in relation to a Nova Scotia Power Inc. rate application. The claimants argued that the Board had the jurisdiction to implement a rate assistance program for low income customers who were disproportionately affected by power rate increases. In a February 2008 decision the Board determined that the relevant sections of the *Public Utilities Act*, as interpreted by the Board, were not contrary to the *Charter* or *Human Rights Act* and required the Board to set rates which, under substantially similar circumstances, would be charged equally to all persons irrespective of personal circumstances.

e. In August 2007 the regulations under the *Liquor Control Act* were substantially amended resulting in the transfer of a number of activities to the Board. This has increased the number of matters being dealt with in this mandate.

f. In December 2007 the Board conditionally approved an application by Nova Scotia Power Inc. for a Fuel Adjustment Mechanism (FAM). This mechanism would introduce a variable component in rates permitting the company to adjust billings to compensate for changes in the price of fuel purchased. A FAM may be implemented on January 1, 2009 provided all conditions set out in the decision are met.

g. In February of 2007 the Board began hearings into an appeal by Heritage Trust of Nova Scotia, the Federation of Nova Scotian Heritage, the Heritage Canada Foundation and the Peninsula South Community Association of the approval of a decision by Halifax Regional Council on March 21, 2006, which approved a development agreement with United Gulf Developments Limited for a mixed-use development containing hotel and residential towers, commercial uses and underground parking located at the northern half of the block bounded by Granville, Sackville, Hollis and Salter Streets, Halifax, Nova Scotia. The evidentiary portion of the proceeding concluded with a site visit on June 28, 2008. In a decision dated September 13, 2007 the Board dismissed the appeals.

While the above items were the most significant activities in terms of public interest, impact on large numbers of taxpayers or ratepayers and consumption of Board resources, there are a large number of matters such as appeal hearings, hearings related to public passenger matters, capital expenditure approvals, licensing applications and transfers, which cumulatively make up the bulk of the Board's work. These other matters, including the increase in liquor matters noted above, make up approximately 741 of the 791 matters completed.

Mission & Vision

The mission of the Nova Scotia Utility and Review Board, as described in the 2007-2008 Business Plan, was to carry out the mandate assigned to it by government through statute and regulation. During the year the Board undertook and completed a new strategic planning process. As a result of that process the mission was restated to be:

Our mission is to fairly and independently resolve matters.

Resolving matters includes:

a. *Providing efficient, cost effective and fair processes (i.e., hearings, appeals, licensing, and compliance);*

b. *Developing a collective body of knowledge and expertise;*

c. *Producing consistent and well reasoned decisions; and*

d. *Appropriately informing public policy.*

As part of the strategic planning initiative a new Vision Statement was developed and introduced. It is:

Our vision is to be a leading administrative and regulatory tribunal.

We will be widely recognized as a fair, independent and accessible board,

making insightful, consistent and well explained decisions, which are provided in a respectful, courteous and timely manner.

The Board adapted its activities during the reporting period to confirm to the new strategic direction.

Core Activities

Quasi-judicial Function. This is the primary function of the Board - to carry out those responsibilities delegated by the Legislature pursuant to various statutes.

Motor Carrier (Public Passenger) Administration. This involves safety inspection, licensing administration, and enforcement functions relating to the public passenger industry and some not-for-profit organizations.

Priorities and Goals

Core Area 1 - Quasi-judicial Function

Priority #1: To produce timely, correct decisions.

The Board has been tasked in legislation and regulation to receive applications and appeals, hear evidence and argument in an appropriate manner, and produce fair, legally correct and well reasoned decisions. For fiscal 2007-2008 the Board continued targets of rendering decisions within 90 days of the date of receipt of final evidence for hearing matters and 10 business days for interlocutory matters[2].

During fiscal 2007-2008 decisions were rendered within 90 days of the date of final evidence in 97.6% of cases (2006-2007: 97.6%). Decisions relating to interlocutory matters were rendered within 10 business days in 85.4% of cases (2006-2007: 79.3%). Further details can be found in the "Measuring Performance" section of this report.

Priority #2: To improve service to the public and parties appearing before the Board.

The following initiatives were planned for fiscal 2008:

a. Continue development of electronic documents and filing systems in order to improve access to information, reduce effort and expense in management of paper records, and reduce paper waste.

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2 Interlocutory matters include rulings on preliminary issues and decisions on some matters which do not require hearing. Rulings are sometimes temporary or provisional in nature.

b. Examine the usefulness of computerized case management programs in use in other courts and tribunals and, if reasonable benefits are possible, implement such systems at the Board.

c. Improve our strategic planning process, including a focus on service delivery.

The strategic planning process was the first initiative undertaken as it would likely affect the other planned activities. The process began in April 2007 and was completed in late October. Stakeholders, including a selection of parties and legal counsel regularly appearing before the Board, Board members, and staff, were broadly consulted. The results of the consultations were summarized and prioritized with the assistance of a facilitator and a new strategic plan produced. The plan is not repeated in this report but can be obtained by contacting the Board. The new plan sets out the following new strategic directions.

Strategic Direction #1: Heighten the efficiency and effectiveness of the UARB.

Strategic Direction #2: Increase understanding of the UARB

Strategic Direction #3: Strengthen the UARB's capacity to adapt to the future.

Activities for the remainder of the year were re-aligned to comply with the new direction.

Strategic Direction #1 includes, as a goal, an intent to continue to improve access to UARB services by implementing an e-filing system, information repository, and case management process. This direction is consistent with the planned initiatives set out in the business plan. During 2007 Board staff visited other tribunals, reviewed other case management systems, and researched various technology alternatives. Using the information obtained from research, detailed implementation work began in early 2008 by consulting with staff and some external parties on what features should be included in the new electronic services. Based on the research and consultations, initial criteria were set and software and vendor selection processes begun. As at March 31, 2008 installation of the new secure document repository had begun, software and a vendor had been selected for implementation of the case management system, and an interim policy on electronic filing issued. These initiatives continued into fiscal 2008-2009 and will be reported on further in the next Accountability Report.

Initiative #3: To ensure proper stewardship of resources and effective administration.

During fiscal 2007 the Board began to review its administrative policies develop a plan to update obsolete policies, add needed ones, or delete those that are no longer required. This project was not completed and was carried forward to fiscal

2008.

This initiative was superceded by and absorbed into the new strategic directions set out above.

Core Area 2: Motor Carrier (Public Passenger) Administration

Priority #1: Maintain an effective safety inspection and enforcement program.

The Division is responsible for inspecting public passenger vehicles subject to the *Motor Carrier Act*, and others voluntarily participating in the program. It is also responsible for enforcing the *Motor Carrier Act, Motor Vehicle Act, Motor Vehicle Transport Act Canada*, and license conditions imposed by Board Order. For fiscal 2007-2008 the Division planned to continue to safety inspect all vehicles under Board jurisdiction at least twice annually.

The safety inspection program was undertaken as planned. During 2006-2007 a total of 4,822 vehicle inspections (2006-2007: 5,008) were reported resulting in 2,993 instances of the vehicle being removed from service (2006-2007: 3,044) for repair or maintenance. In the vast majority of cases the vehicles were later returned to service after correction of the faults and reinspection.

Enforcement statistics for the year with comparisons for the previous year are as follows:

	2007-2008	2006-2007
Road checks	261	138
Investigations	483	400
Summary offense tickets issued	54	11
Motor Carrier violation reports issued	39	20

For the first year inspection activities have been conducted from marked police type patrol vehicles acquired and put in service in early April 2007.

Priority #2: Continue support to the Atlantic Provinces School Bus Purchase Program.

As in past years the Division planned to assist in specification of the types of vehicles to purchase, audit during delivery to ensure design and product supplied are consistent with the purchase agreement, and to safety inspect delivered vehicles.

The support was delivered as planned. A total of 216 busses were purchased with 67 coming to Nova Scotia.

Budget Context

Nova Scotia Utility & Review Board - Estimated Budget Expenditures by Core Business				
Core Business (all)	Budget 2007-2008	Actual 2007-2008	Variance	See Notes
	000's	000's	000's	
Revenues (non-capital):				
Operating Grant from Province of Nova Scotia	3,655.5	3,503.1	(152.4)	1
Recoveries from utilities and others	1,902.4	1,860.7	(41.7)	
Unbudgeted operations	0.0	2,190.2	2,190.2	2
Total revenues	5,557.9	7,554.0	1,996.1	
Expenditures (non-capital):				
Budgeted	5,557.9	5,735.8	177.9	
Unbudgeted operations	0.0	1,854.7	1,854.7	2
Total expenditures	5,557.9	7,590.5	2,032.6	
Expected net income (loss)	0.0	(36.5)	(36.5)	
Restricted & unrestricted surplus, beginning of year	471.6	471.6	-	3
Restricted & unrestricted surplus, end of year	471.6	435.1	(36.5)	
Salaries and benefits	3,918.5	4,188.9	270.4	
Funded Members and staff (FTE's)	49.0	50.0	1.0	

Notes

1. In addition to the operating grant of $3,503,100 the Board also received an additional $236,900 for the purchase of capital assets. The Board purchases capital assets from the funding provided by the Province of Nova Scotia and the utilities. Occasionally larger purchases are supported by separately identified funding. Revenue relating to capital assets is deferred and amortized at the same rate as the related capital assets. Funding provided for planned capital asset acquisitions is also deferred until the year of acquisition and then amortized to revenue over the life of the related asset. Total funds received by grant were $3,740,000 for the year.

2. Consultants are engaged by the Board to provide advice related to matters such as utility and natural gas operations and to provide expert testimony during hearings. Consulting fees for specific hearings are generally recovered directly from the entities involved. Expenses and recoveries relating to large hearings cannot be reasonably predicted or estimated in advance, accordingly, no provision is made for these activities in the budget. The Board also recovers certain transcription, copying and other direct expenses from various sources.

3. Some comparative figures relating to restricted surplus have been restated to conform to adoption of a new accounting policy. Some restrictions are now disclosed as deferred revenues in the Board's financial statements.

The complete audited financial statements of the Board are published annually in Part II of the Public Accounts for the Province of Nova Scotia.

Outcomes and Performance Measures

Performance measurement in a quasi-judicial context must be carefully designed due to the "custom" or "one-time" nature of many applications and appeals. For example, some hearings require reviews of large amounts of evidence, involve many parties, and can take a number of months to schedule and complete. Other matters may only require the review of small amounts of evidence and, after scheduling, need only a few days to complete. Activity and speed measures do not equate to quality of decision making or due legal process. Regardless of the type of hearing the primary emphasis must always be on producing an unbiased, timely, fair and legally correct decision.

Core Business Areas, Measures and Outcomes

Core Business Area 1: Quasi-judicial Function

The core function of the Utility and Review Board is to hear matters and produce unbiased, timely, fair and legally correct decisions based on the specific facts of each case.

Desired Outcome:	Timely, correct decisions.
Measure:	Average time between receipt of final submissions and release of decision.
Target:	Substantially all decisions released within 90 days of receipt of final evidence for hearings and within 10 business days for interlocutory matters.
What Does the Measure Tell Us?	This measure shows how timely the Board is providing decisions to those making applications or appeals.
Where Are We Now and Reporting on 2007-2008 Targets?	As can be seen from the table below the targets are being met in virtually all cases for hearing decisions and in most cases for interlocutory matters. Average decision times are presented in the following table. Variations in average times can be expected from year to year. Larger, more complex hearings take more time to decide and cause the average to increase. Conversely, larger numbers of single matter hearings take less time to decide and cause the average to decrease. With one exception, the average decision time in each mandate area is considerably below the stated goal of producing decisions in less than 90 days from the date of receiving final evidence.

Where do want to be?

As noted above, our target is to release substantially all decisions within 90 days of receipt of final evidence for hearings and within 10 days for interlocutory matters. At this time we wish to continue to have a success rate that is as high as possible while respecting the primary emphasis of producing an unbiased, timely, fair and legally correct decision. No targets have been set for average times to decision in recognition of the higher priority being placed on fairness and correctness . The information will continue to be monitored and the averages kept as low as possible.

Summary results for compliance with policy on decision production times are as follows:

Type of Matter[3]	2007-2008			2006-2007		
	Number of Matters Decided	Matters Within Standard	Success Rate	Number of Matters Decided	Matters Within Standard	Success Rate
Cases requiring hearing	620	605	97.6%	597	575	96.3%
Interlocutory Matters	171	146	85.4%	135	113	83.7%
Combined	791	751	94.9%	732	688	94.0%

3 Hearings include public hearings, *in camera* or closed sessions, telephone conferences and *ex parte* proceedings. Interlocutory matters include rulings on preliminary issues or some matters not requiring hearing and are sometimes temporary or provisional in nature.

Average decision production times by area of jurisdiction are as follows:

Jurisdiction / Mandate	2007-2008		2006-2007	
	Number of Decisions (all types)[4]	Average Time to Decision (days)	Number of Decisions (all types)	Average Time to Decision (days)
Alcohol, Gaming and Amusements	343	2	296	5.5
Assessment	47	40	36	55.5
Criminal Injury Compensation	0	0	6	187
Electricity	14	20	22	5.9
Expropriation Compensation	0	0	1	233
Fire Safety	0	0	2	34.5
Halifax-Dartmouth Bridge Commission	2	0[5]	1	96
Motor Carrier	83	3	67	2.4
Municipal and School Board Boundaries	46	40	11	26.4
Natural Gas	46	3	109	2.4
Planning	11	46	26	36.4
Water[6]	23	43	20	30

Note: The 2007-2008 Business Plan included measures relating to establishment of prices for gasoline and certain fuel oils. Transfer of this responsibility has been deferred by government. Consequently, no measures are available to be included in this report.

4 Excludes interlocutory matters.

5 Decisions rendered on same day as receipt of final submissions.

6 Includes Halifax Regional Municipality waste water matters beginning in 2007-2008.

Core Business Area 2: Motor Carrier (Public Passenger) Administration

The core function of the Motor Carrier Division of the Board is to provide effective inspection and enforcement services relating to motor carrier operations.

Desired Outcome:	An effective safety inspection and enforcement program.
Measure:	Preventable accidents[7] caused by mechanical failure.
Target:	No preventable accidents caused by mechanical failure.
What Does the Measure Tell Us?	This measure shows the effectiveness of the physical inspection program by looking at the end result. The aim of the safety program is to prevent accidents through regular mechanical inspection, examination of maintenance programs, working with carriers to resolve technical and operating problems, and enforcement activities.
Where Are We Now and Reporting on 2007-2008 Targets?	During the year no accidents were identified that could be attributed to preventable mechanical failure.
Where do we want to be?	Our target is to continue to have no accidents which can be attributed to preventable mechanical failure.

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7 "Preventable accidents" is limited to accidents that result in death, injury or significant property damage. Minor incidents which are not reported are not investigated or otherwise considered.

Appendix A
List of Statutes Containing Board Mandate

1. *Assessment Act*, R.S.N.S. 1989, c.23 as amended
2. *Consumer Protection Act*, R.S.N.S. 1989, c.92 as amended
3. *Education Act*, S.N.S. 1995-96, c.1 as amended
4. *Electrical Installation and Inspection Act*, R.S.N.S. 1989, c. 141 as amended
5. *Energy Resources Conservation Act*, R.S.N.S., 1989, c.147 as amended
6. *Expropriation Act*, R.S.N.S. 1989, c. 156 as amended
7. *Fire Safety Act*, S.N.S. 2002, c.6
8. *Gaming Control Act* (Part II), S.N.S. 1994-95, c. 4 as amended
9. *Gas Distribution Act*, S.N.S., 1997, c. 4 as amended
10. *Halifax-Dartmouth Bridge Commission Act*, R.S.N.S. 1989, c.192 as amended
11. *Halifax Regional Municipality Water Commission Act*, S.N.S. 1963, c.55 as amended
12. *Heritage Property Act*, R.S.N.S. 1989, c.199 as amended
13. *Liquor Control Act*, R.S.N.S. 1989, c.260 as amended
14. *Motor Carrier Act* (public passenger only), R.S.N.S. 1989, c.292 as amended
15. *Motor Vehicle Transport Act of Canada*, S.C. 1987, c.35 (Federal) as amended
16. *Municipal Government Act*, S.N.S. 1998, c.18 as amended
17. *Nova Scotia Power Finance Corporation Act*, R.S.N.S. 1989, c.351 as amended
18. *Nova Scotia Power Privatization Act*, S.N.S. 1992, c.8 as amended
19. *Petroleum Resources Act*, R.S.N.S. 1989, c. 342 as amended
20. *Petroleum Resources Removal Permit Act*, S.N.S. 1999 c.7 as amended
21. *Pipeline Act*, R.S.N.S. 1989 c. 345 as amended
22. *Public Utilities Act*, R.S.N.S. 1989, c.380 as amended
23. *Railways Act*, S.N.S. 1993, c.11 as amended
24. *Theatre and Amusement Act*, R.S.N.S. 1989, c. 466 as amended
25. *Underground Hydrocarbons Storage Act*, S.N.S. 2001, c. 37
26. *Utility and Review Board Act*, S.N.S. 1992, c. 11 as amended
27. *Victims' Rights and Services Act*, R.S.N.S. 1989, c.14 as amended